PII: A call to arms! (Take 2)

Frank Maher issues a final warning for solicitors to respond to the SRA discussion paper on PII cover

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Most solicitors' firms are in the process of renewing their professional indemnity insurance for 1 October 2015. But another deadline looms large on the horizon—the closing date for responses to the Solicitors Regulation Authority (SRA) Discussion paper, *Protecting client's financial interests*. Ignore it at your peril—16 September is the last chance to make your views known, and firms of all sizes have every reason to respond: if all the changes under discussion were implemented, we would be moving from a world where virtually all claims are covered to one where few have the broad protection of the SRA minimum terms and conditions (MTC).

Where are we up to?

First, however, where are we up to with the renewal? It may be the last on the current MTC (a point to bear in mind for those thinking of retirement and triggering run-off before its scope is dramatically reduced).

The writer's recent series of three articles outlined what firms should be looking for, discussed problem cases, and the changes mentioned above (see "The PII countdown begins (Pt 1)" NLJ, 10 July 2015, p 18; "(Pt 2)" NLJ, 17 July 2015, p 21; "(Pt 3)", NLJ, 24 July 2015, p 19). So far, the writer is not aware of many firms encountering difficulty obtaining cover, and almost all firms should be able to renew with a rated insurer. One or two larger insurers are pushing for higher premiums, largely due to claims experience, as there have been several larger claims over the past couple of years, albeit the frequency is lower than in the past.

A number of firms are facing coverage disputes, which may complicate their renewal—do they stay with the current insurer to give a show of loyalty, or do they go somewhere else where they feel they may be better looked after?

Anyone who has not started the renewal process yet is playing with fire and should move without further delay—although we have seen few problems so far, the position becomes more acute as the deadline approaches and a ransom situation may develop.

Reforms under discussion

So what of the reforms under discussion? Consider this case study, which is based on a recent case in which the writer's firm acted. An independent financial adviser (IFA) notified its insurers in 2013 of circumstances which may give rise to a claim, in the belief that this would mean, under the terms of the policy, that if a claim arose in future, it would be covered under that policy. They changed insurers. A claim was made in 2014. They notified the 2013 insurers, who said the claim did not arise from the circumstances notified in 2013, and they refused to deal with the defence. So they notified the 2014 insurers. The 2014 insurers said the claim arose from the circumstances notified to the 2013 insurer, so they said it was not covered, and they would not deal with the defence either, leaving the IFA caught between two stools.

If this had been a solicitor, under the current MTC, the 2013 insurer would have had to deal with the defence while the dispute was resolved, and one or other insurer would ultimately have had to pay the claim. If the changes go through and the claimant was a traditional mortgage lender, the solicitors could be caught in exactly the same difficulty. This could be a real issue for large firms too (happily, we obtained a good result for the IFA mentioned above).

Another example based on our recent experience was a high street firm facing a multi-million pound claim. They had several million pounds top up cover. But it turned out that a partner had received a hostile letter from the claimant's solicitors five years earlier and kept it to himself. The matter had gone to sleep. When it revived, the letter was discovered. The top-up insurers cancelled the policy for non-disclosure, leaving the firm with only the compulsory MTC cover of £2m. Happily, the claim settled for around £1m. But under the proposed changes, with only £500,000 compulsory MTC cover, they would have been left with a large bill—and not only the damages, because if there is insufficient cover (and remember, the policy limit includes claimants' costs), the defence costs cover is reduced proportionately, and the firm would have to have contributed to that too.

Outcome 7.13

Last year a new Outcome 7.13 was added to the SRA Code of Conduct, requiring firms to assess and purchase the appropriate level of insurance. But what if a partner or employee retires, or changes firm? They lose control of their own protection. They may have been prudent in the past and limited liability contractually to the minimum level permitted—£3m for incorporated practices, £2m for partnerships and sole practitioners. But changed circumstances after they leave, such as a deterioration in claims experience, or a coverage dispute like the examples above, may leave claimants pursuing individuals personally.

We have the widest cover of any profession in the world. Some consider it expensive, but the cost is largely driven by claims. If the claims are not covered, there will be consequences to address—personal liability, the cost of interventions in firms which collapse as a result, the possibility of some claims falling on the compensation fund, loss of confidence in the profession, and lenders taking more work away from smaller firms.

If any of these points resonates, you should respond to the SRA's discussion paper by 16 September 2015. The paper can be found at *http://goo.gl/rJfvLt* **NLJ**

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